

HP Redundancy  
Administrative Cause No. 11-137H  
February 8, 2012

312 IAC 20-4-11.5 State agency dual review proposals

Authority: IC 14-10-2-4; IC 14-21-1-31

Affected: IC 14-9; IC 14-21-1

**Sec. 11.5. (a) This section governs a state agency proposal that requires review by the division under both 16 USC 470f and IC 14-21-1-18.**

**(b) A state agency may submit a proposal to the division that describes**

**(1) an undertaking or project funded through a combination of state and federal funds that has the potential to affect historic sites and historic structures; and**

**(2) any potential impacts of the undertaking or project on historic sites or historic structures either**

**(A) owned by the state; or**

**(B) listed in the National Register or the Indiana register.**

**(c) A state agency that wishes to make a submission under this section must provide a transmittal letter to the division with “Dual Review Project” in the subject line.**

**(d) Upon receipt of a transmittal letter, the division shall conduct a review simultaneously under both:**

**(1) Section 106 of 16 USC 470f and 36 CFR 800; and**

**(2) IC 14-21-1-18 and this rule.**

**(e) As soon as practicable, the division shall acknowledge to the state agency its receipt of the transmittal letter. The acknowledgement shall state the division would review the information submitted under the authorities referenced in subsection (d). Notification of the dual review shall be made to the following:**

**(1) Interested persons and consulting persons.**

**(2) Members of the review board.**

**(3) By posting on the division’s website.**

**(f) If a submission under this section results in a finding under 36 CFR 800 of no historic property affected or no adverse effect on a history property, the division director shall issue a letter of clearance for the project under this rule.**

**(g) If a submission under this section results in a finding of adverse effect on historic properties under 36 CFR 800, and a memorandum of agreement is executed under 36 CFR 800, the division director shall consider the terms of the memorandum of agreement. If the division director concludes that the objectives and purposes of IC 14-21-1-18 are achieved, the division director shall issue a letter of clearance under this rule and exempt the state agency from obtaining a certificate of approval under IC 14-21-1-18. In addition to any remedy under Section 106 of 16 USC 470 and 36 CFR 800, the department may initiate an enforcement action under IC 14 to achieve compliance with the memorandum of agreement.**

**(h) If a dual review initiated under this section results in a finding of adverse effect on historic properties under 36 CFR 800, but a memorandum of agreement is not executed, the state agency making the submission shall obtain a certificate of approval regarding the project from the review board under section 13 of this rule before taking action that would alter the historic significance or character of the site.**

**(i) If the Indiana Department of Transportation makes a submission for a project involving a bridge covered by the July 17, 2006 “Programmatic Agreement Among the Federal Highway Administration, the Indiana department of Transportation, the Indiana State Historic Preservation Office, and the Advisory Council for Historic Preservation Regarding the Management and Preservation of Indiana’s Historic Bridges,” and a finding of adverse effect on historic properties results under 36 CFR 800, the division director shall consider the mitigations prescribed for the adverse effects under the Programmatic Agreement. If the division director concludes the objectives and purposes of IC 14-21-18 are achieved, the division director shall issue a letter of clearance under this rule and exempt the state agency from obtaining a certificate of approval under IC 14-21-1-18.**